

THE INSTITUTE FOR JUSTICE

Joseph Gay*
jgay@ij.org
Robert Frommer*
rfrommer@ij.org
901 N. Glebe Rd. Suite 900
Arlington, VA 22203
Tel. (703) 682-9320

Robert E. Johnson*
rjohnson@ij.org
16781 Chagrin Blvd. Suite 256
Shaker Heights, OH 44120
Tel. (703) 682-9320

* Admitted *pro hac vice*.

THE VORA LAW FIRM, P.C.

Nilay U. Vora (SBN 268339)
nvora@voralaw.com
Jeffrey Atteberry (SBN 266728)
jatteberry@voralaw.com
201 Santa Monica Blvd., Ste. 300
Santa Monica, California 90401
Tel. (424) 258-5190

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

**JENI PEARSONS and MICHAEL
STORC,**

Plaintiffs,

v.

**UNITED STATES OF AMERICA;
and Federal Bureau of Investigation
Special Agents LYNNE ZELLHART,
KATHRYN BAILEY DRESS,
BRENT JAMES, WALTER DIX,
RYAN HEATON, and LESLEY
BUCHAN, in their individual
capacities,**

Defendants.

Case No. 2:23-cv-07952-RGK-MAR

**PLAINTIFFS' NOTICE OF
MOTION FOR EXTENSION OF
TIME FOR SERVICE AND
MEMORANDUM IN SUPPORT**

*(Filed concurrently with Declaration of
Joseph Gay and Proposed Order)*

Date: January 22, 2024

Time: 9:00 a.m.

Courtroom: 850

Judge: Hon. R. Gary Klausner

Complaint Filed: Sept. 22, 2023

Am. Complaint Filed: Dec. 19, 2023

1 **PLEASE TAKE NOTICE** that on January 22, 2024, at 9:00 A.M. or as
2 soon thereafter as this matter may be heard, in Courtroom 850 of this Court located
3 at Roybal Federal Building and U.S. Courthouse, 255 East Temple Street, 8th
4 Floor, Los Angeles, CA 90012, Plaintiffs Jeni Pearsons and Michael Storc will and
5 hereby do move under Federal Rule of Civil Procedure 4(m) for a two-week
6 extension of time to complete service of process on Defendants Dress, James, Dix,
7 Heaton, and Buchan.

8 As described in the accompanying memorandum and declaration, these
9 defendants were initially named as Doe defendants in Plaintiffs' initial complaint,
10 and Plaintiffs have been diligently working to identify, name, and serve them
11 within the 90-day period set by Rule 4(m). Plaintiffs have identified and named
12 these defendants in their recently filed First Amended Complaint, but despite their
13 efforts they will not be able to serve them by today's 90-day deadline. Plaintiffs
14 expect to complete service tomorrow morning (December 22) but request two
15 weeks in the event that the limited availability of personnel to accept service over
16 the next week frustrates their continued efforts at service. Good cause therefore
17 exists under Rule 4(m) to extend the service deadline by two weeks.

18 Under L.R. 7-3, counsel states that it was not able to confer with counsel for
19 Defendants Dress, James, Dix, Heaton, and Buchan, because they have not yet
20 been served or appeared in this action, and counsel understands that they are not
21 yet represented by counsel. Plaintiffs' counsel informed counsel for Defendants
22 United States and Zellhart that Plaintiffs intended to file this motion at 5:04 p.m.
23 (after learning that Plaintiffs' process server had been turned away and instructed
24 to return tomorrow morning), and counsel for Defendants have not yet indicated
25 whether they take a position on Plaintiffs' request for relief.
26
27
28

1 Dated: December 21, 2023

Respectfully Submitted,

3 /s/ Joseph Gay

4 **INSTITUTE FOR JUSTICE**

Joseph Gay*

5 jgay@ij.org

Robert Frommer*

6 rfrommer@ij.org

901 N. Glebe Rd. Suite 900

7 Arlington, VA 22203

8 Tel. (703) 682-9320

Robert E. Johnson*

9 16781 Chagrin Blvd. Suite 256

10 rjohnson@ij.org

Shaker Heights, OH 44120

11 Tel. (703) 682-9320

12 * Admitted *pro hac vice*

13 **THE VORA LAW FIRM, P.C.**

Nilay U. Vora (SBN 268339)

14 nvora@voralaw.com

Jeffrey Atteberry (SBN 266728)

15 jatteberry@voralaw.com

201 Santa Monica Blvd., Ste. 300

16 Santa Monica, California 90401

17 Tel. (424) 258-5190

18 *Attorneys for Plaintiffs*

MEMORANDUM IN SUPPORT OF
MOTION FOR EXTENSION OF TIME FOR SERVICE

Plaintiffs Jeni Pearsons and Michael Storc respectfully request a two-week extension of Federal Rule of Civil Procedure 4(m)'s 90-day service period to serve the five defendants who were recently substituted in the First Amended Complaint in place of previously named Doe defendants.

Federal Rule of Civil Procedure 4(m) states that "if the plaintiff shows good cause . . . the court must extend the time for service for an appropriate period." Fed. R. Civ. P. 4(m). And courts within this Circuit have repeatedly recognized that when certain defendants' identities are unknown, there "is good cause to allow a plaintiff an extended period of time to identify and serve unknown defendants." *Ticketmaster L.L.C. v. Prestige Ent. W., Inc.*, 315 F. Supp. 3d 1147, 1158 (C.D. Cal. 2018) (citing *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980)) (stating that 90-day service period applies to Doe defendants but may be extended for good cause); *see also Mitchell v. City of Rohnert Park*, No. 09-cv-03076, 2010 WL 583948, at *5 (N.D. Cal. Feb. 16, 2010) (allowing additional 120 days for service because it "will necessarily take plaintiff additional time to discover and identify" the defendants).

Good cause exists here. Since filing the original complaint, Plaintiffs' counsel have diligently worked to identify, name, and serve the Doe defendants. Long before the government's deadline to appear, Plaintiffs' counsel began reaching out to the government's attorneys to identify the counsel who would be representing the government in this action. Decl. of Joseph Gay ¶¶ 4-6 (Dec. 21, 2023) ("Gay Decl."). After conferring with the government's counsel about identifying the Doe defendants, the parties agreed to request an order from the Court permitting Plaintiffs' counsel to research the discovery materials from a related case (*Snitko v. United States*, 2:21-cv-04405-RGK-MAR (C.D. Cal.)). Gay Decl. ¶¶ 7-8. Once that order was granted, Plaintiffs' counsel began researching the

1 Doe defendants' identities, and also reviewing the voluminous discovery materials
 2 for information to confirm that the allegations correctly identified the defendants'
 3 role as FBI agents (as opposed to, for example, the handful of agents from the
 4 USPIIS and other agencies who participated in the searches). *Id.* ¶ 9.

5 On December 19, 2023, Plaintiffs filed their First Amended Complaint
 6 (FAC), which identified the Doe defendants and requested that the clerk's office
 7 issue summonses for the newly identified defendants. D.E. 44-45; Gay Decl. ¶ 10.
 8 Earlier today (December 21), Plaintiffs contacted the clerk's office to again request
 9 that it issue the summonses. *Id.* ¶ 11. Once the summonses were issued, Plaintiffs
 10 immediately tasked their process server with personally serving the FAC on the
 11 defendants. *Id.* ¶ 12. The process server attempted service at the FBI's Los Angeles
 12 field office, but was instructed that no one was available to accept service today,
 13 and that service could instead be accepted on the morning of Friday, December 22.
 14 *Id.* ¶ 13. Accordingly, Plaintiffs have instructed their process server to re-attempt
 15 service tomorrow morning. *Id.* ¶ 14.

16 Plaintiffs therefore request a short extension of two weeks to complete
 17 service on the newly identified defendants, until Thursday, January 4, 2024.
 18 Although Plaintiffs will try to complete service the morning of December 22, and
 19 the following week if necessary, they request two weeks in the event that the
 20 limited availability of personnel to accept service over the next week frustrates
 21 their continued efforts at service.

23 Dated: December 21, 2023

Respectfully Submitted,

24
 25 /s/ Joseph Gay

26 **INSTITUTE FOR JUSTICE**

Joseph Gay*

jgay@ij.org

Robert Frommer*

rfrommer@ij.org

901 N. Glebe Rd. Suite 900

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Arlington, VA 22203
Tel. (703) 682-9320

Robert E. Johnson*
16781 Chagrin Blvd. Suite 256
rjohnson@ij.org
Shaker Heights, OH 44120
Tel. (703) 682-9320

* Admitted *pro hac vice*

THE VORA LAW FIRM, P.C.
Nilay U. Vora (SBN 268339)
nvora@voralaw.com
Jeffrey Atteberry (SBN 266728)
jatteberry@voralaw.com
201 Santa Monica Blvd., Ste. 300
Santa Monica, California 90401
Tel. (424) 258-5190

Attorneys for Plaintiffs

PROOF OF SERVICE

I am admitted *pro hac vice* for purposes of this action. I am over the age of 18 and not a party to this action. My business address is 901 N. Glebe Rd., Suite 900, Arlington, VA 22203. My electronic service address is jgay@ij.org. On the execution date below and in the manner stated herein, I caused service of a true and correct copy of the **Plaintiffs' Notice of Motion for Extension of Time for Service and Memorandum in Support, Declaration of Joseph Gay with Exhibit A in Support of Motion, and Proposed Order**, filed on December 21, 2023, at ECF 48, to be delivered on all interested parties in this action as follows:

☒ BY PROCESS SERVER to the following:

Kathryn Bailey Dress
Los Angeles, Federal Bureau of Investigation
11000 Wilshire Boulevard,
Suite 1700
Los Angeles, California 90024

Ryan Heaton
Los Angeles, Federal Bureau of Investigation
11000 Wilshire Boulevard,
Suite 1700
Los Angeles, California 90024

Brent James
Los Angeles, Federal Bureau of Investigation
11000 Wilshire Boulevard,
Suite 1700
Los Angeles, California 90024

Lesley Buchan
Los Angeles, Federal Bureau of Investigation
11000 Wilshire Boulevard,
Suite 1700
Los Angeles, California 90024

Walter Dix
Los Angeles, Federal Bureau of Investigation
11000 Wilshire Boulevard,
Suite 1700
Los Angeles, California 90024

☒ BY Certified Mail via USPS by dropping documents into a sealed envelope to be delivered to the following:

Kathryn Bailey Dress; Brent James; Walter Dix; Ryan Heaton; and Lesley Buchan
c/o U.S. Attorney General
Merrick Garland
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

Kathryn Bailey Dress; Brent James; Walter Dix; Ryan Heaton; and Lesley Buchan
c/o U.S. Attorney's Office, C.D. of California
Civil Process Clerk
Federal Building
300 North Los Angeles Street, Suite 7516
Los Angeles, CA 90012-3341

1 [X] Via electronic mail of the CM/ECF filing system to the following:

2
3 Jasmin Yang, Assistant U.S. Attorney
4 Yujin Chun, Assistant U.S. Attorney
5 U.S. Attorney's Office, C.D. of California
6 Federal Building, Room 7516
7 300 N. Los Angeles Street
8 Los Angeles, California 90012

9 *Attorneys for Defendants*
10 *United States of America and Lynne Zellhart*

11 [X] (STATE) I declare under penalty of perjury under the laws of the State of
12 California that the above is true and correct.

13 Executed on December 21, 2023, at Arlington, Virginia.

14 /s/ Joseph Gay